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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,053	09/12/2003	Abraham Wien	W1036/20013	6728

24131 7590 10/19/2005  
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EXAMINER
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LHYMN, EUGENE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/661,053

Applicant(s)

WIEN ET AL.

Examiner

Eugene Lhymn

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 4-11, 13, 14, 17 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 12, 15, 16, 18-22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/26/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

I. Continuous band – claims 1, 2, 3, 12, 15-16, 18-25

o Closure species – 12 (spring pull clip) and 23 (drawstring)

II. Non-continuous band – claims 1, 2, 4-25

o Closure species – 6-7 (pull clip), 8-10 (hair band clip), 11 (heat seal), 12 (spring pull clip), 23 (drawstring)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Ralph Locher on 10/12/05 a provisional election was made without traverse to prosecute the invention of the continuous band, spring pull clip, claims 1, 2, 3, 12, 15-16, 18-22, 24-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-11, 13-14, 17, and 23 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 25 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, it is unclear exactly how the fold prevents engagement of the corner with the corner of an adjacent nested liner. Moreover, the benefit of folding the corner of a nested liner is unclear and indeterminate. Even furthermore, it appears that the fold is not "radially inward" and must be correctly and appropriately described. Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the functionality and utility of a "radially inward" fold of a corner of a nested liner is unclear and indeterminate. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 15-16, 18-20, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wien (US 6102239) in view of Bonke (US 5133607). With respect to claim 1, Wien discloses the following:

- A plurality of nested liners removably attached to each other to form a unitary liner structure (Fig. 12)
- A receptacle having a circumferential attachment lip (Fig. 3)
- Each of the liners having a pull grip (Fig. 13)
- Perforations disposed between the pull grip and attachment device (Fig. 10)
- Uppermost liner of plurality of liners can be removed from the unitary liner structure without substantially disturbing the positioning of the underlying liners (Fig. 12)

However, Wien fails to disclose an elastic attachment device. Nonetheless, Bonke teaches a plastic liner bag and container system having an elastic attachment device (Fig. 2, item 18). An elastic attachment device is more resilient and fatigue-wear resistant. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the attachment device of Wien to be elastic as taught by Bonke so as to provide an elastic attachment device that is more resilient and fatigue-wear resistant.

With respect to claim 2, Bonke teaches the elastic attachment device being an elastic band.

With respect to claim 3, Bonke teaches the elastic band comprising a continuous elastic band.

With respect to claim 15, Wien teaches the elastic attachment device extending around the entire circumference of the unitary liner structure.

With respect to claim 16, Wien teaches the elastic attachment device being disposed within a circumferential sheath.

With respect to claim 18, Wien teaches the perforations being disposed substantially close to the elastic attachment device (claim 6).

With respect to claim 19, Wien teaches the perforations being disposed along the side of the elastic attachment device (claim 7)

With respect to claim 20, Wien teaches a plurality of liner walls defining a material-receiving mouth at a top end of the liner walls, in addition to a closed base joining the liner walls at a bottom end thereof (claim 8).

With respect to claim 22, Wien teaches the liners of the plurality of liners comprising a closure device.

With respect to claim 24, Wien teaches the perforations being disposed between the closure device and the elastic attachment device.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wien in view of Bonke as applied to claim 1 above, and further in view of Jones (US 6019244).

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With respect to the claim, Wien, as modified above, discloses the claimed invention having a locking clip (62) but does not teach the clip being spring-operated. However, Jones teaches an elastic band having a spring-operated pull-clip. Having an elastic band having a spring-operated pull-clip provides a secure tightening mechanism for the liner or container, as the spring ensures that the clip always locks to hold the band. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the band of Wien to have a spring-operated pull-clip as taught by Jones so as to provide a secure tightening mechanism for the liner or container.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

O'Brien (US 6679398 B1)

Collinson (US 5178469)

Kucera et al. (US 5219220)

Long (US 6003717)

Arnold et al. (US 6520120 B1)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER**